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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/898,702	07/02/2001	Benjamin W. Slivka	3382-59319	4420

26119 7590 12/17/2004

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EXAMINER	
HARRELL, ROBERT B	

ART UNIT	PAPER NUMBER
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DATE MAILED: 12/17/2004

24

Please find below and/or attached an Office communication concerning this application or proceeding.

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.

EXAMINER	
ART UNIT	PAPER
	24

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Commissioner for Patents

Attached hereto is Examiner Answer to the Appellant's Appeal Brieft filed May 3, 2004.

This Examiner's Answer is in response to the appellant's Appeal Brief filed May 3, 2004 (paper #23).

I. Real Party in Interest

A statement identifying the real party in interest is contained in the brief and is acknowledged.

II. Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief and is acknowledged.

III. Status of Claims

This is an Answer to an appeal from the final rejection of claims 28-35 and 37-56, which are all the claims in the case. Examiner agrees with the statement of the status of the claims contained in the appellant's brief.

IV. Status of Amendments After Final

Examiner agrees with the statement of the status of amendments contained in the appellant's brief.

V. Summary of Invention

Examiner agrees with the summary of the invention contained in the appellant's brief.

VI. Issues

Examiner agrees with the issues presented for review as contained in the appellant's brief.

VII. Grouping of Claims

Examiner agrees with the grouping of the claims as contained in the appellant's brief.

VIII. Claims Appealed

Examiner agrees that the copy of the appealed claims as contained in the appendix of the appellant's brief is correct.

IX. References of Record

The following is a listing of the references of record relied upon for establishing the rejection under 35 U.S.C. 102(e):

U.S. Patent 5,845,077 Fawcett filed November 27, 1995.

X. Grounds of Rejection

1. Claims 28-35 and 37-56 are rejected under 35 U.S.C. 102 (e) as being anticipated by Fawcett (5,845,077).

2. All references to columns and figures, herein below, are those to Fawcett.

3. Starting with claim 53, Fawcett anticipated *a computer-readable storage medium* containing the Appellant's invention as currently claimed since those skilled in the art knew that computer software (e.g., see Abstract (lines 1-2)) was stored (locally or at a host site's main storage as in figure 2 (42))) and/or carrier medium transported (e.g., CD ROM) on a computer readable-medium if not at least the storage in the computer's memory such that the software could be executed; and, such storage in and of itself was a computer-readable storage medium. Also, Fawcett taught his system as *having a* computer executable *distribution file* (downloaded computer software with executable installation application as covered in col. 9 (lines 52-53)) *for distribution and installing software on a computer* (user computers of figure 2), *the distribution file comprising*:
a) *software installable at the computer* (any operating system such as Windows95 ® in col. 6 (lines 40-49), and/or the downloaded computer software of col. 9 (line 52));
b) *an installer co-resident in the distribution file with the software; the installer operable to install the software* (e.g., see col. 8 (lines 40-63) and/or col. 9 (lines 52-63));
c) *an extractor co-resident in the distribution file with the software, the extractor operable to extract the software from the distribution file and automatically invoked upon execution of the distribution file* (since "bulletin board systems (BBSs) where referenced in col. 2 (lines 10-11) and "modem" in col. 2 (line 27) data compression was inherently known to have been implemented to reduce storage and bandwidth; thus, such extractions ("*extractor*") were required to "decompress" the file for "immediate installation" (e.g., see col. 8 (line 49)); OR, the "installation application" of col. 9 (lines 51-55) was the "*extractor*");
d) *installer starting instructions arranged within the distribution file to be automatically executed up completion of extraction of the software, the installer starting instructions operable to start the installer to install the software* (e.g., see col. 9 (lines 40-63)).

4. Per the other claims (28-35, 37-52, and 54-56) they do not teach or define above the correspondingly rejected claims, save for the reasons given below, and are thus rejected for the reasons given above.

5. Per claims, such as claim 28 and claim 29, to create such a computer readable-medium, such a method was inherently required and which further included the file stored at a location referenced and accessible to the remote computer (user computer) via a computer network (e.g., see col. 4 (line 34), col. 5 (lines 2-28), and col. 9 (lines 17-25)).

6. Per claims, such as claim 37, the server computer was shown in figure 2 (38) and the remote computers as shown in figure 2 (34). As covered above, col. 8 (line 40) to col. 9 (line 67), accepted an indication from a user at the remote computer of a selected software to be installed on the remote computer and in response, thereto, uploading a software disruption file to the remote computer as claimed.

7. Per claims, such as, claim 40 and claim 41, see col. 10 (line 18 "Digital signatures").

8. Per claims, such as, claims 42-44, see col. 8 (lines 26-58 (specifically line 52 for appropriate directories)) in that backups (col. 8 (line 34)) are required since files are modified "updated" or removed "deleted". Also, changing a file with a new file effectively deletes the old file if the two have the same name for the updated new file.

XI. Response to Argument

1. Per the appellant's arguments, being on page 6, the appellant argued in substance that:
a) Fawcett does not describe a single file that contains installable software, an installation application, and installation application starting instruction. Neither does Fawcett describe that the installation application is at a location within the file so as to be automatically executed in response to execution of the file. However, per above and in col. 8 (lines 40-63) and/or col. 9 (lines 46-67) such was covered by Fawcett most specifically in col. 9 (lines 52-53 "Included with the downloaded computer software is an installation application"). Such was also the "installation application" as covered in col. 9 (line 62) and further covered in col. 9 (lines 59-63). That is, the obtained software was a self-extracting packet (file) having both the software to be loaded and also, within the downloaded packet, the installation routines used to automatically install the software once "launched" by the user;
b) Per claims 30 and 39, with reference to the Appellant's disclosure, Fawcett's description of automatic installation of software does not teach or suggest a single file comprising software, an installation program, and installation program starting instruction arranged within the file to be automatically executed responsive to execution of the file, nor does Fawcett's description of automatic installation of software teach or suggest a file comprising software and instructions for installing the software at a location within the file so as to be automatically executed response to execution of the file. However, col. 9 (lines 52-53) stated that included with the downloaded computer software was an installation application which, per col. 9 (lines 59-63), clearly taught automatic installation upon execution (launching) of the file. Giving the words "distribution file" the broadest reasonable interpretation, such would have covered the combined downloaded computer software which included the executable portion of the

file which was the installation application as covered in col. 9 (lines 52-53). Since the installation application, which was executable, was included with the software in the download, the two combined formed a file that was executable;

c) Fawcett's passages describing "included with" do not describe installation program starting instructions in the same file as the software, and/or do not describe that installation program starting instructions are placed within a files so as to be automatically executed response to execution of the file. However, per col. 9 (lines 59-63), the user simply launched the installation application supplied by the update service computer which was included with the downloaded computer software. As indicated above, a distributed "file" is of sufficient scope to encompass col. 9 (lines 52-53) which was executable per col. 9 (lines 59-63) as indicated by the word "launches";

d) the Office has concluded that, based on the passage in Fawcett, an installation application must be part of the software file downloaded in Fawcett. However, such was expressly taught in col. 9 (lines 52-53) of Fawcett, which states, "Included with the downloaded computer software is an installation application"; since the installation application was executable, the download software with installation application was executable;

e) it does not follow that an installation application must necessarily be in the same file as the software to be installed. However, per col. 9 (lines 52-53), and as indicated above, downloaded software plus installation application equals a distribution file which when executed ("launched") automatically installs the software into the corresponding directories; the two combined form a distribution file.

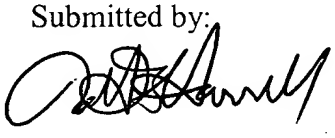
2. The Appellant recites limitations of claims 28, 32, 33, 34, 35, 37, 38, 46, 47, 53, 54 and 55 and then states they should be allowable for the reasons similar to those stated for claims 30 and 39. However, for the reasons cited above, these claims also stand rejected for the reasons similar to claims 30 and 39.

3. For all or the reasons set forth supra, it is respectfully requested that the rejections as presented be sustained.

XII. Period for Response to New Ground of Rejection.

No extension of time is permitted for filing a Reply Brief under 37 C.F.R. 1.136(a).

Submitted by:



Robert B. Harrell
(Primary Examiner: Art Unit 2142)

Appeal Conferees:

JACK B. HARVEY
SUPERVISORY PATENT EXAMINER

Jack B. Harvey
(Supervisory Patent Examiner: Art Unit 2142)

Kenneth R. Coulter
(Primary Examiner: Art Unit 2141)

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